

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

EDWARD T. ESSLINGER, GLORIA)
GLOVER, ARDATH ROGERS, and all) Case No. 2:10-cv-03213-BMS
others similarly situated,)
)
 Plaintiffs,)
 vs.)
)
 HSBC BANK NEVADA, N.A. and)
 HSBC CARD SERVICES, INC.,)
)
 Defendants.)
 _____)

ORDER

This matter came before the Court on the motion of James L. Chastain to continue the hearing on preliminary approval of the settlement agreement in this case. Mr. Chastain also sought the settlement documents as well as any depositions taken in this matter. For good cause shown, I find that the motion should be GRANTED.

The court declines to approve the settlement agreement at this time and continues the hearing to another term of court. Mr. Chastain shall be provided with the settlement agreement and any depositions taken. The hearing on the preliminary shall be rescheduled, and Mr. Chastain shall be given notice of such hearing.

IT IS SO ORDERED.

Schiller, J.

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

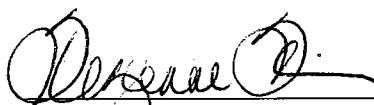
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 Defendants.)
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**MOTION TO CONTINUE HEARING
AND/OR DENY PRELIMINARY APPROVAL**

James L. Chastain, on behalf of himself and a class of similarly situated South Carolina citizens, move this Court to continue the hearing for preliminary approval of the settlement (scheduled for January 31, 2012) and or deny preliminary approval of the settlement agreement in this matter. This motion is supported by a memorandum of law, filed contemporaneously herewith.

Respectfully submitted,

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January 24, 2012

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

EDWARD T. ESSLINGER, GLORIA)	Case No. 2:10-cv-03213-BMS
GLOVER, ARDATH ROGERS, and all)	
others similarly situated,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
HSBC BANK NEVADA, N.A. and)	
HSBC CARD SERVICES, INC.,)	
)	
Defendants.)	
)	

**MEMORANDUM IN SUPPORT OF
MOTION TO CONTINUE PRELIMINARY HEARING AND TO
OBJECT TO PRELIMINARY APPROVAL OF SETTLEMENT**

James L. Chastain, on his own behalf and on behalf of a class of similarly situated South Carolina citizens, hereby files this Motion to Continue the Preliminary Hearing scheduled to take place on Monday, January 31, 2012, as well as a general objection to the settlement. Although this hearing has been set since November 15, 2012, neither Mr. Chastain, nor his counsel¹ were given notice of this hearing date until January 12, 2012. Furthermore, Mr. Chastain and his counsel have not been provided with any settlement documents or the terms of settlement, despite repeated requests and notice of deposition pursuant to Rule 30(b)(6). Thus, any appearance by Mr. Chastain or his counsel cannot be based on adequate knowledge or information. Therefore, Mr. Chastain strenuously objects to preliminary approval of the settlement and requests that this

¹Mr. Chastain's South Carolina attorneys, A. Camden Lewis and Michael E. Spears, will be filing Motions to be Admitted Pro Hac Vice in order to appear before this Court.

Court continue the hearing until such time as Mr. Chastain has been provided with all settlement documents, depositions, and sufficient notice of hearing.

BACKGROUND and ARGUMENT

HSBC initiated a collection against Mr. Chastain on March 30, 2009 in the Court of Common Pleas in Greenville County, South Carolina.² On September 13, 2010, Chastain filed an Amended Answer and Counterclaim in which he sought a class action against HSBC composed of:

All South Carolinians who entered into a credit card agreement with the Plaintiff, HSBC Bank Nevada, N.A., or its subsidiaries, and who paid premiums for Account Protection Plus³. (hereinafter, “Class Members”).

Chastain has also filed a motion for class certification of that South Carolina class.

In July of 2011, Chastain and his counsel were informed by HSBC of an imminently pending nationwide settlement. However, at an October 6, 2011 hearing, HSBC informed the South Carolina court that there was no deadline for the settlement or preliminary approval. Chastain, through his counsel, requested copies of settlement documents. At that time, HSBC indicated that no settlement documents had been completed. Thereafter, HSBC represented to the South Carolina court that settlement would be finalized in early December 2011. Mr. Chastain then learned that the parties in this case had received an extension of time to complete the settlement documents, but was informed that the settlement would be finalized by the end of 2011.

²The caption of that case is *HSBC Nevada, N.A. v. Chastain*, C/A 09-CP-23-2151.

³The “Account Protection Plus” as used in this Motion refers to all similar insurance-like payment protection plans, under any name, offered by Plaintiff HSBC and any of its subsidiaries.

However, despite the fact that the South Carolina case has been pending since 2009, and the fact that the parties before this Court knew that Chastain's counsel had requested the settlement documents in this case, neither the Plaintiffs in this matter nor HSBC have provided such documents. In fact, even though the plaintiffs in this case would purport to represent a nationwide class, which could include Mr. Chastain, Plaintiffs have taken the position that the settlement documents are confidential and cannot be provided to Mr. Chastain.⁴ In addition, although this Court issued an order on November 15, 2011, setting the preliminary approval hearing, HSBC did not notify Chastain or his counsel of the date of the hearing until January 21, 2012.

In order for this Court to make a preliminary fairness evaluation, this Court should consider all of the relevant information:

In some cases this evaluation can be made on the basis of information already known to the court, supplement as necessary by briefs motions, or information presentations by the settling parties. The court may want to hear not only from counsel but also from the named plaintiffs, from other parties, and from attorneys who did not participate in the negotiations.

4 Newberg on Class Actions (4th Ed.) § 11.25 (citing Manual for Complex Litigation 3rd Ed.) (emphasis added).

Mr. Chastain's litigation has been since pending since 2009, years before this case was filed. Mr. Chastain brought class claims against HSBC and may have knowledge that would assist this Court in evaluating the settlement now before it. Thus, this Court should allow Chastain and his counsel to, *inter alia*: review the settlement documents, take depositions, evaluate the

⁴The fact that the settlement documents will purportedly be filed on Friday, January 27, 2012 is not sufficient notice for Mr. Chastain to prepare specific objections. This Court order provides that "all papers in support of preliminary approval of the proposed settlement" must be filed on January 27, 2012. Arguably, the deadline for Mr. Chastain's motion and objections would be due the same day.

fairness of the settlement, and submit their opinions as to the fairness of the settlement. However, since Mr. Chastain and his counsel have not been provided with the terms of settlement which would allow for a more specific objection, Mr. Chastain, on behalf of himself and a class of similarly situated South Carolina citizens, nonetheless objects to preliminary approval of the settlement in this case and moves for a continuance of the hearing of January 31, 2012.

CONCLUSION

Chastain hereby respectfully requests that this Court continue the hearing on preliminary approval or deny the request for preliminary approval of the settlement. Chastain also requests that this Court order that Chastain's counsel be provided the settlement documents immediately, be provided time in which to evaluate the fairness of the settlement, and also order that Chastain should be notified of any approval hearings.

Respectfully submitted,

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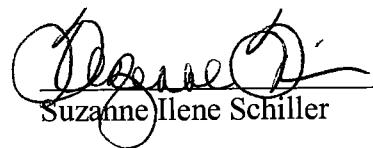
OF COUNSEL

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January 24, 2012

CERTIFICATE OF SERVICE

Suzanne Schiller hereby certifies that on the date set forth below she caused a true and correct copy of the foregoing Motion to Continue Hearing and/or Deny Preliminary Approval and supporting Memorandum of Law to be served electronically through the Courts ECF system and via first class mail, postage prepaid on all counsel on the attached service list.



Suzanne Ilene Schiller

Dated: January 24, 2012

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2:10-cv-032130BMS

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